In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 716

WILLIAM R. JACKSON, WILLIAM R. AND ALICE J. JACKSON, CLEVELAND CHAIR COMPANY, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The question here is whether the court of appeals properly sustained the Tax Court's finding (R. 1230a)[1] that there were, in the years 1942 through 1945, fraudulent understatements of the income of William R. Jackson and his wife, Alice J. Jackson, their partnership, Jackson Manufacturing Company, and their wholly-owned corporation, Cleveland Chair Company. There is ample evidence to sustain the Tax Court's findings. That court properly placed the burden of proof. There is no conflict or other ground for further review.

1. Petitioner[2] conceded in the Tax Court that the gross sales of Cleveland Chair Company and Jackson

[1] "R." references are to the joint appendix in the court of appeals.

[2] William R. Jackson is referred to as "petitioner." Alice J. Jackson is a party here because joint returns were filed for the years in question. The Tax Court declined to find that she had personally committed fraud (R. 1230a–1231a).

Manufacturing Company had been understated by about $256,000 and $309,000, respectively, but contended that at least an equal amount had been expended to purchase materials on the black market, and had not been taken as deductions (Pet. App. A2). Had black market purchases in these amounts been shown, petitioner would have been entitled to deductions sufficient to offset the unreported income and thereby negate any tax deficiencies and any charge of fraud.

The Commissioner, in asserting the deficiencies, gave taxpayer no credit for such black market purchases. Thereafter, petitioner showed that there had been some such purchases and that the Commissioner's determination was erroneous. Under the rule of *Helvering* v. *Taylor*, 293 U.S. 507, this removed the presumption of correctness attaching to the Commissioner's determination and left the matter to be resolved in the Tax Court on the basis of the actual evidence submitted, with the Commissioner having the burden of going forward.[3] This he did. The revenue agent on the case testified that petitioner's office manager had admitted during the audit that the black market purchases had amounted only to between $75,000 and $100,000 (R. 1089a–1090a). Although called as a witness on behalf of petitioner, the office manager did not deny this admission, but testified in general terms that all of the unreported receipts had gone toward black

[3] Petitioner, however, was left with the burden of persuasion. *United Aniline Co.* v. *Commissioner*, 316 F. 2d 701, 704 (C.A. 1).

market purchases. No other evidence was produced in support of the claimed amount of deduction. The Tax Court, as trier of the facts, was within its province in disregarding the office manager's trial testimony and finding in accord with his original, undenied statements to the agent (R. 1239a, 1243a).

Thus, contrary to the petitioner's contention (Pet. 25–34), the presumption of correctness attaching to an unrefuted deficiency determination played no part in the Tax Court's findings, so that there is no inconsistency with *Helvering* v. *Taylor, supra.* Nor did the Tax Court require petitioner to prove the correct amount of black market purchases. The petitioner was required, in order to avoid a deficiency, only to impeach or overcome the Commissioner's evidence that no more than $100,000 of such purchases had been made.

The Tax Court consequently found for the Commissioner not because of petitioner's failure to prove the correct amount of tax, but rather for his failure to overcome or discredit the Commissioner's evidence that the maximum amount of black market purchases was $100,000.[4]

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[4] The cases petitioner alleges to be in conflict with the decision here hold only that once a taxpayer presents evidence that the deficiency determination was incorrect, the determination can play no further part in establishing the amount of liability and any finding of liability must be based on evidence of record in the Tax Court—a principle which was fully observed in the proceedings below. See *Cohen* v. *Commissioner*, 266 F. 2d 5 (C.A. 8); *Richardson* v. *Commissioner*, 264 F. 2d 400 (C.A. 4); *Harp* v. *Commissioner*, 263 F. 2d 139 (C.A. 6); *Cullers* v. *Commissioner*, 237 F. 2d 611 (C.A. 8).

2. Petitioner is also wrong in contending (Pet. 39–43) that the Tax Court failed to place on the Commissioner the burden of proving that some part of the deficiencies was due to fraud. Petitioner admitted that during the period 1942 through 1945, more than $500,000 was deposited in bank accounts under fictitious names. He complains here of the Tax Court's rejection of his argument that these accounts were created without his knowledge by a bank official who had engaged in various other fraudulent activities. The Tax Court's rejection of this explanation was based on evidence showing manipulation of petitioner's companies' books, and on evidence tracing some $184,000 of these fictitious deposits to petitioner's personal account (Pet. App. A4–A5). On this record the court of appeals correctly ruled that the Commissioner's evidence of fraud was "clear and convincing."

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
MITCHELL ROGOVIN,
Assistant Attorney General.
WILLIAM A. FRIEDLANDER,
JONATHAN S. COHEN,
Attorneys.

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